

Applicants : Paul V. Werme *et al.*  
Serial No. : 09/864,825  
Filed : May 24, 2001  
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Attorney Docket No.: Navy Case 83017

**Amendments to the Drawings:**

The attached sheet of drawings includes changes to Fig. 2A. This sheet, which includes Fig. 2A, replaces the original sheet including Fig. 2A.

Attachment: Replacement Sheet: Fig. 2A

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## **REMARKS**

By this Amendment, the Abstract is replaced, Fig. 2A is replaced pursuant to the attached drawing sheet, claims 1-7 and 21 are cancelled without prejudice to or disclaimer of the subject matter contained therein, and claims 16 and 36 are amended. Accordingly, claims 8-20 and 22-36 are pending in this application. No new matter is added by any of these amendments.

Reconsideration based on the following remarks is respectfully requested.

### **I. Amendments to the Specification and the Drawings**

The specification is amended to correct minor inconsistencies. The corresponding paragraphs of U.S. Patent Application Publication 2003/0167270 are also identified. The substitute drawings also filed September 19, 2001 are corrected to replace an identification label "FG43" in Fig. 2A for the Resource Manager with --FG42-- to be consistent with the specification and Fig. 14. No new matter is added by these amendments.

### **II. Objection to the Specification**

The Office Action objects to the specification, and in particular to the Abstract for minor informalities. The Abstract is replaced as attached correcting the informalities. Applicants respectfully request that the objection to the specification be withdrawn.

### **III. Objection to the Claims**

The Office Action objects to claim 36 for minor informalities. Claim 36 is amended accordingly. Applicants respectfully request that the objection to the claims be withdrawn.

### **IV. Indefiniteness Rejection under 35 U.S.C. §112, second paragraph**

The Office Action rejects claim 36 as being allegedly indefinite under 35 U.S.C. §112, second paragraph. As such, Applicants amend claim 36 to obviate the rejection. Applicants respectfully request that the rejection under 35 U.S.C. §112, second paragraph, be withdrawn.

### **V. Allowable Subject Matter**

Applicants gratefully acknowledge that the Office Action indicates that claims 26-35 are allowed and that claims 21 and 36 contain allowable subject matter. As such, Applicants amend

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claim 16 to incorporate the allowable features from claim 21. Applicants also amend claim 36 to obviate the objection and indefiniteness rejection.

**VI. Anticipatory Rejection under 35 U.S.C. §102**

The Office Action rejects claims 1-3, 6-9, 12, 14 and 15 as being allegedly anticipated under 35 U.S.C. §102(b) over U.S. Patent 6,041,306 to Du *et al.* (hereinafter "Du"). This rejection is rendered moot for claims 1-3, 6 and 7 and is respectfully traversed for the remaining claims.

Applicants' claims are directed generally, for example, to a resource management device generating signals responsive to information on performance of the M managed characteristic application computer programs and the hosts. For example, Applicants' independent claim 8 recites the signals including, *inter alia*, a first signal that controls a configuration of an M<sup>th</sup> copy of the programs, each of the M managed characteristic application computer programs being managed by one of the hosts; a second signal that controls a start up of an (M+1)<sup>th</sup> copy of the programs; a third signal that controls a shutdown and restart of the M<sup>th</sup> copy; and a fourth signal that controls a movement of the M<sup>th</sup> copy from first to second hosts. Applicants respectfully submit that Du does not describe or suggest at least these claimed features. This also applies by extension to claims 9, 12, 14 and 15 based on their dependence from claim 8.

Instead, Du discloses a workflow process for a distributed management system 10. In particular, Du teaches a process manager engine 20 in communication with a database 21 and switchware 26 for resource managers 28. See col. 5, lines 44-58 and Figs. 2 and 5 of Du. The portions of Du cited in the Office Action merely describe example Hewlett Packard middleware and configuration management systems. These examples do not appear to have any association with starting and moving application program copies, as provided in Applicants' claims.

A claim must be literally disclosed for a proper rejection under §102(a), (b) or (e). This requirement is satisfied "only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference" (MPEP §2131). Applicants assert that the Office Action fails to satisfy this requirement with Du. For at least these reasons, Applicants respectfully request that the rejection under 35 U.S.C. §102 be withdrawn.

**VII. Obviousness Rejections under 35 U.S.C. §103**

A. The Office Action further rejects claims 4, 5, 10, 11 and 13 as being allegedly obvious and thereby unpatentable under 35 U.S.C. §103(a) over Du in view of U.S. Patent 6,654,029 to Chiu *et al.* (hereinafter “Chiu”). This rejection is rendered moot for claims 4 and 5 and is respectfully traversed with respect to the remaining claims.

Chiu does not compensate for the deficiencies of Du outlined above for claim 8. Nor does Chiu teach, disclose or suggest the additional features recited in claims 10, 11 and 13, including those relating to fault tolerance and priority assignments. Instead, Chiu discloses an asset management system. In particular, Chiu teaches a tools 102, library 104 and program resources 106 for assets stored on servers 110. See col. 7, lines 49-67 and Fig. 1 of Chiu.

A *prima facie* case of obviousness for a §103 rejection requires satisfaction of three basic criteria: there must be some suggestion or motivation either in the references or knowledge generally available to modify the references or combine reference teachings, a reasonable expectation of success, and the references must teach or suggest all the claim limitations. See MPEP §706.02(j). Applicants assert that the Office Action fails to teach or suggest the features recited in claims 10, 11 and 13 with Du and Chiu.

B. The Office Action also rejects claims 16-20, 22 and 25 as being allegedly obvious and thereby unpatentable under 35 U.S.C. §103(a) over Du in view of U.S. Patent 6,742,020 to Dimitroff *et al.* (hereinafter “Dimitroff”). The Office Action additionally rejects claims 23 and 24 as being allegedly obvious and thereby unpatentable under 35 U.S.C. §103(a) over Du in view of Dimitroff and further in view of Chiu. These rejections are rendered moot by the incorporation of allowable subject matter of claim 21 into claim 16. This reason applies by extension to claims 27-20 and 22-25 based on their dependence from claim 16.

For at least these reasons, Applicants respectfully request that the rejections under 35 U.S.C. §103 be withdrawn.

**VIII. Conclusion**

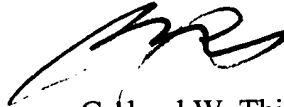
In view of the foregoing amendments and remarks, Applicants respectfully submit that this application is in condition for allowance. Favorable reconsideration and prompt allowance are earnestly solicited.

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Should the Examiner believe that anything further is desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,



Gerhard W. Thielman  
Registration No. 43,186

Attachments:

Substitute Abstract  
Replacement Drawing Sheet (Fig. 2A)

Date: April 19, 2006

**DEPARTMENT OF THE NAVY**  
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